

October 17, 2022

The Honorable Chief Judge Alan Trust
Courtroom 960
United States Bankruptcy Court
Eastern District of New York
Alfonse M. D'Amato Federal Courthouse
290 Federal Plaza
Central Islip, New York 11722

Re: *In re Brickchurch Enters., Inc.*, Case No. 8-22-70914-ast (the “Bankruptcy Case”); Position Letter of JGB with Respect to the Debtor’s Obligations Under the JGB Loan Documents

Dear Judge Trust,

JGB Partners, LP, JGB Capital, LP, JGB (Cayman) Ancona, Ltd. and JGB Plymouth Rock, LLC and their affiliates (collectively “JGB”) respectfully submits this position letter regarding the outstanding obligations (the “Obligations”) of Brickchurch Enterprises, Inc. (the “Debtor”) under: (i) the JGB Loan Documents,¹ (ii) the Foreclosure Judgment,² (iii) the Referee Report, which was considered by the Supreme Court for the State of New York, County of Suffolk (the “State Court”) in entering the Foreclosure Judgment; and (iv) insurance documents.³ Each of these documents were previously provided to the Court in connection with the Bankruptcy Case, an index of which is attached for ease of reference.

While this letter is not a joint position letter that was contemplated by the Court in its comments to the parties on October 6, 2022, this letter does reflect agreement by the parties as to the Undisputed Amounts and the Disputed Amounts (each as defined below). The reason this is not a joint letter is simply because the Debtor would like to include legal briefing on its disputes with the Obligations in any position letter. JGB respectfully disagrees and asserts that such disputes should be raised either in a claim objection or a brief in connection with the hearing scheduled for October 26, 2022 on the *Motion of the Debtor for Entry of an Order Approving the Debtor’s Entry into Exit Financing Commitment* [Doc. No. 115] (the “Exit Financing Motion”). As such, the Debtor and JGB were unable to reach an agreement on a form of a joint position letter. JGB understands that the Debtor will submit its own position letter regarding the Obligations.

¹ “JGB Loan Documents” means, collectively: (i) the Secured Promissory Note, dated July 25, 2018 (the “Note”); (ii) the mortgage securing the Note (the “Mortgage”); (iii) the Collateral Assignment of Rents, dated July 25, 2018 (the “Assignment”); and (iv) all other documents and agreements created or contemplated thereunder.

² “Foreclosure Judgment” refers to the judgment entered by the State of New York, County of Suffolk (the “State Court”) on February 2, 2022 at document number 99 in the case styled and numbered, *JGB Partners, LP, et al. v. Brickchurch Enters., Inc., et al.*, Index No. 6323208/2019 (the “State Court Action”).

³ “Referee Report” means the *Report of Referee of Amount Due* filed on July 27, 2021 at document number 80 in the State Court Action and confirmed by the State Court through the Foreclosure Judgment.

Nothing in this letter should be construed as JGB waiving any rights, objections, arguments, interests, or claims, or consenting to any issues or matters discussed herein, including, without limitation, the right to bring future requests for any relief that JGB may be entitled to under applicable bankruptcy and non-bankruptcy law or defending against any of the Debtor's objections to the Disputed Amounts (as defined below).

A. Undisputed Amounts

JGB understands the Debtor agrees that the following amounts are presently due and payable to JGB pursuant to the Foreclosure Judgment, the JGB Loan Documents and applicable law (the "Undisputed Amounts"). JGB acknowledges that the Undisputed Amounts are without prejudice to the Debtor's appellate rights with respect to the Foreclosure Judgment, including the appeal styled *Brickchurch Enters., Inc. v. JGB Partners, L.P., et al.*, pending in the Appellate Division, Second Department of the New York Supreme Court (the "Appeal").

The categories of the Undisputed Amounts include the following:

<u>Category</u>	<u>Amount</u>
Principal, as of July 1, 2021, and as determined by the Referee Report and Foreclosure Judgment	\$26,000,000.00
Accrued Interest , as of July 1, 2021, and as determined by the Referee Report and Foreclosure Judgment	\$10,161,668.00
Forbearance Exit Charge, as of July 1, 2021, and as determined by the Referee Report and Foreclosure Judgment	\$2,000,000.00
5% Late Charge, as of July 1, 2021, and as determined by the Referee Report and Foreclosure Judgment	\$1,527,183.00
Insurance payments, as of July 1, 2021, and as determined by the Referee Report and Foreclosure Judgment	\$42,873.90
Real Estate Taxes, as of July 1, 2021, and as determined by the Referee Report and Foreclosure Judgment	\$229,796.95
Subtotal pursuant to the Referee Report and Foreclosure Judgment as of July 1, 2021 (the "<u>Subtotal</u>")	\$39,961,521.85
Interest at the per diem rate of \$13,000 on the Subtotal, as determined by the Referee Report and Foreclosure Judgment, from July 2, 2021 through the anticipated pay off date of November 9, 2022 ⁴	\$6,435,000.00
Insurance payments from July 1, 2022 through February 2, 2022	\$55,749.66
UNDISPUTED AMOUNT TOTAL	\$46,452,271.51

⁴ JGB acknowledges that the interest amount will fluctuate depending on the actual date the Debtor pays JGB, indefeasibly in full, in cash, the amounts as determined by the Court at the hearing on October 26, 2022.

B. Disputed Amounts

The following amounts constitute disputed amounts (the “Disputed Amounts”). JGB’s position is that the Disputed Amounts are presently due and payable to JGB pursuant to the JGB Loan Documents, the Foreclosure Judgment, and applicable law. JGB understands that the Debtor objects to the Disputed Amounts. JGB intends on submitting its arguments in support of payment of the Disputed Amounts in its opposition to the Exit Financing Motion.

The categories of the Disputed Amounts include the following:

<u>Category</u>	<u>Amount</u>
Debtor’s indemnity obligations under the Loan Documents ⁵	\$2,500,000.00
Legal (Haynes and Boone) fees and expenses from August 2, 2021 through April 29, 2022 ⁶ related to the State Court Action	\$176,814.87
Legal (Rivkin Radler) fees and expenses from August 2, 2021 through April 29, 2022 related to the State Court Action	\$23,671.50
Legal (Haynes and Boone) fees and expenses from April 30, 2022 through September 30, 2022 related to the Bankruptcy Case	\$978,749.33
Expert (FTI Consulting) fees and expenses from April 30, 2022 through September 30, 2022 related to the Bankruptcy Case	\$190,232.73
Legal (Haynes and Boone) fees and expenses from April 30, 2022 through September 30, 2022 related to the State Court Action and the Appeal	\$11,106.00
Estimated legal (Haynes and Boone) fees and expenses that continue to accrue from October 1, 2022 through November 9, 2022 related to the State Court Action and the Appeal ⁷	\$100,000.00
Estimated legal (Rivkin Radler) fees and expenses from April 30, 2022 through November 9, 2022 related to the State Court Action and the Appeal	\$100,000.00
Estimated legal fees and expenses (Haynes and Boone) that continue to accrue from October 1, 2022 through November 9, 2022 related to the Bankruptcy Case	\$615,000.00
DISPUTED AMOUNT TOTAL	\$4,695,574.43

⁵ JGB asserts that the indemnity obligations arise under the Note (§§ 11.1, 11.12(a)) and the Assignment (§ 9) and are payable as adequate protection payments based on the contingent threat of the Debtor commencing litigation against JGB, such as on the grounds set forth in the Blouin Affidavit [Doc. No. 76].

⁶ As part of the Foreclosure Judgment, JGB waived its right to collect the legal fees and expenses incurred as of August 1, 2021 in the amount of \$305,786.05. State Court Action, Foreclosure Judgment. This amount is not included in these calculations.

⁷ JGB acknowledges that all estimated amounts will fluctuate depending on the actual date the Debtor pays JGB, indefeasibly in full, in cash, the amounts as determined by the Court at the hearing on October 26, 2022.

In summary, JGB asserts that the total amount due and owing under the JGB Loan Documents, the Foreclosure Judgment, and applicable law is \$51,147,845.94.

JGB looks forward to the Court's determination on the Undisputed Amounts and the Disputed Amounts at the hearing on October 26, 2022.

Respectfully submitted,

HAYNES AND BOONE, LLP

/s/ Richard S. Kanowitz

Richard S. Kanowitz
30 Rockefeller Plaza, 26th Floor
New York, NY 10112
212-659-7300
richard.kanowitz@haynesboone.com

*Attorneys for JGB Partners, LP,
JGB Capital, LP,
JGB (Cayman) Ancona, Ltd.
and JGB Plymouth Rock, LLC and their affiliates*

Index

<u>Document</u>	<u>Exhibit Number</u>⁸
Mortgage, dated July 25, 2018	JGB Ex. No. 1
Secured Promissory Note, dated July 25, 2018	JGB Ex. No. 2
Collateral Assignment of Rents, dated July 25, 2018	JGB Ex. No. 8
Report of Referee of Amount Due, dated July 27, 2021 [State Court Doc. No. 80]	JGB Ex. No. 14
Foreclosure Judgment, dated February 2, 2022 [State Court Doc. No. 99]	JGB Ex. No. 18
Insurance documents	JGB Ex. Nos. 40–51; Debtor Ex. Nos. G–I

⁸ The Exhibit Numbers refer to the numbers given to each exhibit listed on: (i) the *Debtor's List of Witnesses and Exhibits for Scheduled Contested Matters* [Doc. No. 79] and (ii) *JGB's Witness and Exhibit List for Hearing on August 31, 2022 at 10:30 a.m. (ET)* [Doc. No. 83]. The Court admitted each of these exhibits at the hearing on August 31, 2022, as set forth in the order docketed at Document Number 105.